IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 05-CV-00329-TCK-SAJ**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF OKLAHOMA'S RESPONSE TO "TYSON DEFENDANTS' MOTION FOR LEAVE TO EXCEED NUMERICAL LIMITATION ON REQUESTS FOR ADMISSION"

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, ("the State"), by and through counsel, and responds to the "Tyson Defendants' Motion for Leave to Exceed Numerical Limitation on Requests for Admission" ("RFA Motion") [DKT #949] as follows:

1. The Tyson Defendants have not demonstrated "good cause" for the 878 requests for admission -- a more than eight-fold increase over their allotment under LCvR 36.1 -- that they seek leave to serve.

2. The requests for admission that the Tyson Defendants seek leave to serve are being used as a discovery device and are, therefore, inconsistent with the purposes of requests for admission and improper.

3. These improper requests for admission that the Tyson Defendants seek leave to serve are excessive in number and otherwise inconsistent with the law and are, therefore, unduly burdensome and oppressive.

The RFA Motion should, therefore, be denied.

I. Legal Standard

LCvR 36.1 provides that "[w]ithout leave of Court or written stipulation of the parties, the number of requests for admissions for each party is limited to twenty-five (25)." Courts with local rules limiting the number of requests for admission employ a "good cause" standard in evaluating requests for leave to serve requests for admission in excess of the local rules. *See, e.g., Estate of Manship v. United States*, 232 F.R.D. 552, 559 (M.D. La. 2005); *Golden Valley Microwave Foods, Inc. v. Weaver Popcorn Company, Inc.*, 130 F.R.D. 92, 93 (N.D. Ind. 1990). Further, contrary to what the Tyson Defendants suggest in their brief, Fed. R. Civ. P. 26(2) is focused on limiting discovery, not expanding discovery.[1] *See* Advisory Committee Notes to 1993 Amendments to Rule 26 ("Textual changes are then made in new paragraph [b](2) to enable the court to keep tighter rein on the extent of discovery. The information explosion of recent decades has greatly increased the potential for discovery to be used as an instrument for delay or oppression") (emphasis added).

II. Argument

A. The proposed requests for admission are based upon an incorrect premise of fact -- that the Tyson Defendants have not been provided meaningful

[1] Notably, the two cases the Tyson Defendants have cited to in their papers in support of granting additional discovery allowed only minimal additional discovery. In *Manship* the court allowed 10 additional requests for admission. Four of the requests asked the government to authenticate certain documents; four of the requests asked the government to admit certain statements in the documents; and two of the requests asked the government to admit a computation of the time elapsed between the filing of certain documents and the filing of the lawsuit. *Manship*, 232 F.R.D. at 559-60. In *American Chiropractic* the court denied a motion to compel responses to those interrogatories which exceeded the number allowed by rule, with one exception. *American Chiropractic Association v. Trigon Healthcare, Inc.*, 2002 WL 534459, *1 (W.D. Va. Mar. 18, 2002). Neither of these cases stand for the proposition that a request for more than an eight-fold increase in the number of requests for admission would be appropriate.

discovery -- and an incorrect premise of law -- that requests for admission are a discovery device

1. The assertion that the Tyson Defendants have not been provided meaningful discovery is incorrect

The Tyson Defendants' proffered justification for the proposed 878 requests for admission is that the State has failed to provide "meaningful information about their claims pursuant to Federal Rules of Civil Procedure 26(a) (Initial Disclosures), 33 (Interrogatories) and 34 (Requests for Production)," RFA Motion, p. 2, and that the State "still refuse[s] to provide even the most basic information and evidence relating to their claims." RFA Motion, p. 6. The Tyson Defendants' proffered justification is incorrect. Aside from those materials to which it has asserted privileges and protections allowed under the Federal Rules, the State has provided the Tyson Defendants with a wealth of information and materials pertaining to its case.[2] Moreover, discovery is still in its beginning stages in this case.[3]

In any event, as to its initial disclosure, the State has fully complied with the dictates of Fed. R. Civ. P. 26(a). The State has provided what is required by the rule: it has set forth a list of individuals and description by category of materials the State may use to support its claims. *See* Fed. R. Civ. P. 26(a)(1). The State's disclosure is nothing if not comprehensive. It runs

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[2] In fact, the root of the Tyson Defendants' complaints against the State all appear traceable to the Tyson Defendants' obstinate refusal to acknowledge that they are not presently entitled to production of the State's trial preparation materials. This issue is before the Court in the form of Cobb-Vantress, Inc.'s pending Motion to Compel. It is the State's position the State's trial preparation materials are protected by the work product doctrine, and that the State will produce all trial preparation materials required under Fed. R. Civ. P. 26(a)(2)(B) when it discloses its expert witnesses in this case. *See* Fed. R. Civ. P. 26(a)(2)(B) ("The [expert] report shall contain a complete statement of . . . the data or other information considered by the witness in forming the opinions . . ."). No expert witness disclosure dates have been set.

[3] The Tyson Defendants make passing reference to the Poultry Integrator Defendants' motion for entry of a so-called *Lone Pine* case management order in the case. The State will respond to that motion by a separate response. Suffice it to say here, a *Lone Pine* case management order is wholly inappropriate in an action such as this.

approximately 75 pages in length.[4] *See* Exhibit 1. The Tyson Defendants, however, persist in arguing that the State's disclosure is deficient because the State has not produced work product material prior to a decision being made as to whether that work product material will be used by a testifying expert. The Tyson Defendants' argument that they are entitled to production of these materials is flatly contradicted by Advisory Committee Notes to 1993 Amendments to Rule 26. These Notes plainly state that "[t]he disclosing party does not, by describing documents under subparagraph (B), waive its right to object to production on the basis of privilege or work product protection, or to assert that the documents are not sufficiently relevant to justify the burden or expense of production."

The State has likewise complied with its discovery obligations with respect to interrogatories served by the Tyson Defendants. The Tyson Defendants have collectively served, and the State has responded to, 48 separately numbered interrogatories.[5] *See* May 5, 2006 Objections and Responses of State of Oklahoma to Separate Defendant Cobb-Vantress, Inc.'s First Set of Interrogatories and Requests for Production of Documents Propounded to Plaintiffs (attached as Exhibit 2); June 15, 2006 Objections and Responses of State of Oklahoma to Separate Defendant Cobb-Vantress, Inc.'s Second Set of Interrogatories Propounded to Plaintiffs (attached as Exhibit 3); June 15, 2006 Objections and Responses of State of Oklahoma to Separate Defendant Tyson Foods, Inc.'s First Set of Interrogatories Propounded to Plaintiffs (attached as Exhibit 4); June 15, 2006 Objections and Responses of State of Oklahoma to Separate Defendant Tyson Poultry, Inc.'s First Set of Interrogatories Propounded to Plaintiffs

[4] Ignoring reality, the Tyson Defendants nonetheless assert that the State has "refuse[d] to provide basic information in [its] Rule 26(a) disclosures." RFA Motion, p. 5.

[5] Again ignoring reality, the Tyson Defendants assert that the State has "refuse[d] to provide basic information . . . in response to Rule 34 requests for production." RFA Motion, p. 5.

(attached as Exhibit 5); and June 15, 2006 Objections and Responses of State of Oklahoma to Separate Defendant Tyson Chicken, Inc.'s First Set of Interrogatories Propounded to Plaintiffs (attached as Exhibit 6).

Finally, the State has complied with its discovery obligations with respect to requests for production served by the Tyson Defendants. The Tyson Defendants have collectively served, and the State has responded to, three separately numbered requests for production.[6] *See* May 5, 2006 Objections and Responses of State of Oklahoma to Separate Defendant Cobb-Vantress, Inc.'s First Set of Interrogatories and Requests for Production of Documents Propounded to Plaintiffs (attached as Exhibit 2).[7]

Against this backdrop, it is incredible that the Tyson Defendants would assert that the State has failed to provide meaningful discovery about the claims it is asserting in its detailed 36-page First Amended Complaint. Nonetheless, this assertion does reveal the true motivations behind the Tyson Defendants' desire to serve the 878 proposed requests for admission. The Tyson Defendants plainly seek to improperly use the proposed requests for admission as discovery tools rather than as a means to reduce the costs of litigation by eliminating the necessity of proving facts that are not in substantial dispute, to narrow the scope of disputed issues, or to facilitate the presentation of cases to the triers of fact. The 878 proposed requests

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[6] Cobb-Vantress has brought a motion to compel regarding certain work product claims asserted by the State.

[7] In addition to the thousands of pages of documents it has already produced to the Poultry Integrator Defendants, beginning this month the State is, on an agency by agency basis, making responsive documents available for inspection and copying to all defendants, including the Tyson Defendants. The agency productions scheduled thus far include: the Oklahoma Department of Environmental Quality on November 27, 2006; the Oklahoma Scenic Rivers Commission on December 4, 2006; the Oklahoma Water Resources Board on December 18, 2006; and the Oklahoma Conservation Commission on January 9, 2007.

for admission, however, will not meaningfully reduce the cost of litigation, narrow the scope of issues, or facilitate the presentation of cases to the triers of fact.

2. Use of requests for admission for discovery purposes is improper

The law is clear: "[r]equests for admissions are not a general discovery device." *Misco, Inc. v. U.S. Steel Corp.*, 784 F.2d 198, 205-06 (6th Cir. 1986) (*citing* 8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2253). Rather, as explained in *Audiotext Communications Network, Inc. v. US Telecom, Inc.*, 1995 WL 625744, *1 (D. Kan. Oct. 5, 1995):

> Requests for admission serve "two vital purposes, both of which are designed to reduce trial time. Admissions are sought, first to facilitate proof with respect to issues that cannot be eliminated from the case, and secondly, to narrow the issues by eliminating those that can be." Fed. R. Civ. P. 36 advisory committee notes (1970 Am.). "The purpose of a request for admissions generally is not to discover additional information concerning the subject of the request, but to force the opposing party to formally admit the truth of certain facts, thus allowing the requesting party to avoid potential problems of proof."

(Citations omitted); *see also Wigler v. Electronic Data Systems Corp.*, 108 F.R.D. 204, 206 (D. Md. 1985) (*citing* 8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2253) ("Rule 36 is not a discovery tool in the truest sense, but, rather, is a procedure for obtaining admissions for the record of facts already known") (emphasis added). In sum, "[a] request may be improper if it is simply 'an effort to obtain basic factual discovery.' Interrogatories and depositions are the proper vehicle for such discovery. 'A party cannot put the burden of discovery on the other party by obtaining all factual details by means of requests for admission.'" *Audiotext*, 1995 WL 625744, *3 (citations omitted)

Even a cursory review of the proposed requests reveals that the Tyson Defendants are not seeking "admissions for the record of facts already known," but rather are improperly engaged in a discovery exercise that uses requests for admission to seek facts and opinions in the first instance. *See, e.g.*, Request for Admission Nos. 23-70 (seeking information about the State's

sampling and analysis program); Nos. 551-88 (seeking information about evidence possessed by the State about the poultry industry's contribution of constituents of concern into the Illinois River Watershed environment generally); Nos. 589-614 (seeking information about evidence possessed by the State about the Tyson Defendants' contribution of constituents of concern into the Illinois River Watershed environment generally). That this undertaking by the Tyson Defendants is an exercise in discovery rather than in narrowing the facts for trial is underscored by the fact that at the conclusion of the proposed requests for admission, the Tyson Defendants propose a request for production that seeks, for each request that the State denies, "any and all documents in your possession, custody or control that support your statement of denial."

B. The Tyson Defendants have not seriously tried to narrow the issues through these requests for admission

As explained above, the Tyson Defendants' proposed requests are aimed more at conducting discovery than narrowing the issues. Even assuming arguendo that they were aimed at narrowing the issues, this is not an instance in which the Tyson Defendants have served their available one hundred requests for admission, established crucial, undisputed core facts and narrowed the issues presented, and then demonstrated that they can further narrow the issues with a few more requests. Rather than doing the harder job of crafting fewer requests in compliance with LCvR 36.1 and seeking to genuinely establish significant undisputed facts, the Tyson Defendants have chosen to propose a blunderbuss approach which fires off a multiplied number of insignificant, largely objectionable requests at the State for response from the get-go. The Tyson Defendants should be required first to narrow their requests to the number allowed by LCvR 36.1 and then ask for more requests if and only if their original set significantly narrows the issues and they demonstrate further narrowing is possible. "Request for admissions should

be made only if the requesting party has a reasonable expectation that the opponent should in good faith admit them." *Audiotext*, 1995 WL 625744, *2 (emphasis added).[8]

C. The proposed requests for admission improperly seek irrelevant information and minutiae

As explained in *Audiotext*, "'requests for admission should focus on important factual matters and not factual minutiae.'" *Audiotext*, 1995 WL 625744, *3 (citation omitted). The 878 requests for admission that the Tyson Defendants seek leave to serve largely dwell on minutiae. As explained by one court tasked with evaluating the propriety of requests for admission totaling some 1,664 items: "A closer look reveals that the defendant's requests [for admission] represent an attempt not just to nail down the core facts of the case, but also to pick every nit that a squad of lawyers could possibly see in it. Answering these requests in a conscientious and timely way would have taxed the powers of Hercules, even before he cleaned the Augean Stables." *Wigler v. Electronic Data Systems Corp.*, 108 F.R.D. 204, 205 (D. Md. 1985) (emphasis added).

Some of the most egregious examples of minutiae contained in the proposed requests include: Request for Admission No. 83 ("There are more than 30,000 known phosphorus compounds"), Request for Admission No. 155 ("195,314 people lived in the Illinois River Watershed in 2000"), Request for Admission No. 629 ("Plaintiff has purchased commercial fertilizer"), and Request for Admission No. 631 ("Plaintiff has purchased liquid commercial fertilizer").

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[8] For example, in Request No. 127, the Tyson Defendants posit: "Bacteria levels in Oklahoma's streams are not a public health problem." And in Request No. 129, the Tyson Defendants posit: "The bacteria present in Oklahoma's streams are not dangerous." The Tyson Defendants are well aware that the health threats from bacteria originating in poultry waste is a disputed issue in this case. Moreover, it bears noting, these requests are so poorly drafted that they do not even focus on the bacteria in the Illinois River Watershed, but instead seek an admission about bacteria levels in Oklahoma's streams as a whole. Such requests are a waste of the State's and the State's counsel's time, and would be subject to legitimate objections based on their facial irrelevance.

Not only do they inquire into minutiae rather than core facts, but also the proposed requests inquire into matters that are irrelevant to the case and matters that, even if they were to be admitted, would not narrow the issues for trial. Request for Admission Nos. 865-78 are prime examples of the irrelevant inquiries the Tyson Defendants seek to make in the proposed requests. These requests are grouped under a heading entitled "Plaintiff's Discovery Conduct." That "discovery conduct" neither goes to a claim or defense in this action nor narrows the issues for trial is beyond dispute.

The requests also improperly seek admissions as to issues of law. *See, e.g.*, Request for Admission Nos. 87, 88, 717, 782-790.[9] Issues of law are for the Court to decide, and an admission or denial by a party on what the law is or states does not narrow the issues for trial. *See, e.g., Lakehead Pipe Line Co. v. American Home Assurance Co.*, 177 F.R.D. 454, 458 (D. Minn. 1997) ("a request for admission which involves a pure matter of law, that is, requests for admissions of law which are related to the facts of the case, are considered to be inappropriate").

D. The proposed requests improperly seek to invade matters protected by the work product doctrine and prematurely elicit expert opinion

The Tyson Defendants' improper assault on the work product doctrine also continues unabated, as reflected in the proposed requests for admission. Discovery into the State's expert trial preparation materials -- not admissions as to facts -- is plainly the goal of many of the proposed requests. For instance, the Tyson Defendants seek discovery into the State's protected sampling activities with Request for Admission Nos. 23-45 (locations of sampling activities and

[9] For example, Request No. 88 states: "If a substance does not appear on the CERCLA Hazardous Substance List, it is not a hazardous substance under CERCLA."

types of samples collected)[10] and Nos. 47-70 (types of analyses done on samples collected).[11] This is improper.

Some of the proposed requests also reflect an improper effort to prematurely discover expert opinion. For instance, assuming arguendo that the information would even be relevant, the Tyson Defendants seek admissions regarding quantification of the amounts of alleged contributors other than poultry waste to the degradation of the Illinois River Watershed. *See, e.g.*, Requests for Admission Nos. 465-76 (point sources)[12] & Nos. 477-88 (non-point sources).[13]

E. The proposed requests are excessive in number and would be hugely burdensome

While this case does present some complexities, it is only the Poultry Integrator Defendants' mischaracterizations of the State's case and the obfuscatory defense strategies[14] which attempt to render it extraordinarily complex.[15] In any event, "admissions 'should not be of

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[10] For example, Request No. 33 states: "Plaintiff installed a sampling device or devices on one or more properties located in Arkansas that are owned or administered by a governmental entity other than the State of Arkansas."

[11] For example, Request No. 47 states: "Plaintiff analyzed one or more of the samples it collected in Arkansas for elemental phosphorus."

[12] For example, Request No. 465 states: "Point sources contribute at least 35% of the elemental phosphorus contributed to the Illinois River Watershed."

[13] For example, Request No. 477 states: "Non-point sources other than poultry litter contribute at least 50% of the elemental phosphorus that is contributed to the Illinois River Watershed."

[14] For example, the effort to join scores of third-party defendants to the case.

[15] In fact, the State's case is remarkably simple conceptually. As explained in paragraph 1 of the State's First Amended Complaint [DKT # 18]:

> Millions of chickens and turkeys, owned by the Poultry Integrator Defendants, are raised annually on hundreds of farms throughout the Illinois River Watershed (the "IRW"), and include, without limitation, birds raised for food products ("broilers"), birds raised for egg production ("layers") and birds raised for

such great number and broad scope as to cover all the issues [even] of a complex case,' and '[o]bviously . . . should not be sought in an attempt to harass an opposing party.'" *Wigler*, 108 F.R.D. at 206-07 (citation omitted). Indeed, "courts have held requests for admission that run into the hundreds and even thousands are abusive . . . ." *Leonard v. University of Delaware*, 1997 WL 158280, *7 fn 19 (D. Del. Mar. 20, 1997) (collecting cases) (finding 839 requests for admission, many of which were compound, improper).

Despite the fact that the proposed requests to admit number 878, the Tyson Defendants have the audacity to actually assert that "the burden on Plaintiffs to respond is negligible." RFA Motion, p. 3. It would plainly require hundreds of hours to research and respond to these requests. The Tyson Defendants disingenuously posit that "Plaintiffs need only admit or deny each request." RFA Motion, p. 3. Fed. R. Civ. P. 36, however, provides otherwise. Contrary to the Tyson Defendants' suggestion, the State's obligations will be more than simply going down an easy 878-point checklist, admitting or denying discrete factual points. Because many of the requests are irrelevant, seek the State's trial preparation material or are otherwise objectionable, the State will be forced to object and to state the reasons for its objections. Fed. R. Civ. P. 36(a). If the State cannot simply admit or deny the request as stated, Fed. R. Civ. P. 36(a) requires that it "set forth in detail the reasons why [it] cannot truthfully admit or deny the matter." Further, "when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or

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> breeding and resupply purposes ("breeders" and "pullets"). These "poultry growing operations" result in the generation of hundreds of thousands of tons of poultry waste for which the Poultry Integrator Defendants are legally responsible. It has been, and continues to be, the Poultry Integrator Defendants' practice to store and dispose of this waste on the lands within the IRW -- a practice that has caused injury to the IRW, including the biota, lands, waters and sediments therein. The Poultry Integrator Defendants are responsible for this injury.

deny the remainder." Fed. R. Civ. P. 36(a). The Tyson Defendants' suggestion that the State will not need to make a detailed response or "write an essay" collides sharply both with the actual language of Fed. R. Civ. P. 36 and with the Tyson Defendants' failure to draft requests needing no qualification in the State's responses. Thus, the State is faced with the potential burden of setting forth why it cannot admit or deny hundreds of requests, and qualifying partial admissions or denials -- a far more burdensome task than simply writing "admitted" or "denied" after each request.[16]

The Tyson Defendants' claim that their requests "pointedly address the elements of Plaintiffs' claims" so the requisite knowledge to admit or deny each request "should be readily available to Plaintiffs" is belied (1) by the Tyson Defendants' definition of "plaintiff," "you" and "your," (2) by the fact that most of these requests go to the Tyson Defendants' purported defenses to the State's claims and not the State's claims themselves, and (3) by the Tyson Defendants' loose drafting of the requests.

Taking each of these points in turn, the Tyson Defendants define "plaintiff," "you" and "your" as:

> . . . the Plaintiff State of Oklahoma, including all offices, personnel, entities, and divisions of the Oklahoma state government. These terms also include W.A. Drew Edmondson and the office of the Oklahoma Attorney General, Miles Tolbert and the office of the Oklahoma Secretary of the Environment and their attorneys, experts, consultants, agents and employees.

See Proposed Requests for Admission, Definition No. 2. This definition presents at least two issues. First, this definition would require a very broad search of agencies, offices and personnel in order to determine whether the State should admit or deny each request. Second, this

[16] As noted previously, the Tyson Defendants also seek (improperly) to pose an interlocking request for production going to each request for admission that is denied.

definition includes the State's attorneys, experts, and consultants within it. These individuals are not "the State." The Tyson Defendants' inclusion of these individuals in its definition not only represents an improper attempt to invade the thought processes of counsel in formulating the State's responses, but also an improper attempt to mine the information available to the State's experts and consultants outside the mechanisms of discovery found in Fed. R. Civ. P. 26(a)(2) and (b)(4). All of this is significant (as well as burdensome and objectionable) because a party responding to a request for admission may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that it has made "reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny" the substance of the request. *See* Fed. R. Civ. P. 36(a). The State therefore would be greatly burdened in framing appropriate objections and responses to the Tyson Defendants' proposed requests.

As to the second point, because many of the requests go to the Tyson Defendants' purported defenses to the State's claims, *see, e.g.*, Request for Admission Nos. 142-418, 434-50, 453-88, 543-45, 615-713, the Tyson Defendants are simply incorrect in their assertion that their requests "pointedly address the elements of Plaintiffs' claims." RTA Motion, p. 3 (emphasis added). Indeed, because much of it is irrelevant to the State's claims, the information sought by the Tyson Defendants in these requests is less than "readily available to Plaintiffs." The State will be significantly burdened in trying to run this information to ground.

Finally, as to the third point, the Tyson Defendants repeatedly seek admission as to whether Plaintiff or the Attorney General "has stated," "has said" or "has estimated" one thing or another. *See, e.g.*, Request for Admission Nos. 120, 122, 124, 126, 128, 137, 140, 154, 253, 419, 421, 424, 425, 426, 427, 430, 432, 434, 436, 541, 746, 747, 768, 769, 770, 771, 772, 820, 822,

824, 827, 859, 861, 863. The State suspects the Tyson Defendants have gleaned quotes or paraphrases from documents and wants the State to admit or deny the truth of these quotes or paraphrases. However, unlike in *Manship*, 232 F.R.D. at 559-60, the Tyson Defendants do not supply or identify the source document (if there is one) for the State to review in framing its response to the requests to admit. Instead, the Tyson Defendants would unduly burden the State with canvassing a broad swath of state agencies and employees and materials to determine who, if anyone, made these sorts of statements, and to determine if "the State" agrees with the pronouncement, denies it, or has to somehow qualify its response. Assuming arguendo that establishing that the State has made a particular statement would somehow establish an important fact or narrow the issues, the Tyson Defendants could easily have appended a copy of the document (or at least identified the source document) containing the alleged statement to its requests in order to reduce the burden of a response. That it did not do so is simply one more piece of evidence that the requests the Tyson Defendants seek leave to serve are more an exercise in make-work than in economically establishing undisputed facts.

F. The Tyson Defendants have failed to establish "good cause" in their request for leave to serve these excessive, improper requests for admission

The Tyson Defendants' motion is brought on an incorrect premise -- that they have not been provided meaningful discovery in this case. They have been. The proposed blunderbuss requests for admission that the Tyson Defendants seek leave to serve, in any event, are improper on a number of grounds: they are improperly being used as a discovery device; they improperly focus on minutiae and irrelevancies that do not genuinely narrow the issues for trial; they improperly seek to invade matters protected by the work product doctrine; they are excessive in number; and they are poorly structured. The burden that would be imposed on the State in responding and objecting to these proposed requests would therefore be enormous, with minimal

legitimate benefit to the Tyson Defendants. The Tyson Defendants should be restricted to serving a set of appropriate requests for admission, numbering no more than 100, addressing core factual issues. After the State responds to those requests the issue of whether additional requests are warranted may be taken up through the meet and confer process.

III. CONCLUSION

Wherefore, premises considered, the "Tyson Defendants' Motion for Leave to Exceed Numerical Limitation on Requests for Admission" [DKT #949] should be denied.

Respectfully Submitted,

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